



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Chicken Ranch Rancheria – Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12-10-03

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12-10-03. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Chicken Ranch Rancheria. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Chicken Ranch Rancheria. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, which will strengthen the tribal government and improve the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916) 978-6067; Fax: (916) 916-6099; or De Springer, Office of Indian Services, Bureau

of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Chicken Ranch Tribal Council adopted this Ordinance by Resolution 12-10-03-03 on October 3, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Chicken Ranch Tribal Council duly adopted the Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12-10-03 by Chicken Ranch Tribal Council Resolution 12-10-03-03 on October 3, 2012.

Dated: August 6, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs.

The Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12-10-03, shall read as follows:

The Tribal Council ("Council") for the Chicken Ranch Rancheria of Me-wuk Indians of California Tuolumne County California ("Tribe") does hereby ordain as follows:

Section 1. Declaration of Findings. The Council hereby finds as follows:

1. Section 6 (i) of the Constitution of the Tribe grants to the Tribal Council the power “to license and regulate the conduct of all business activities within the Tribal

jurisdiction.”

2. The introduction, possession and sale of alcoholic beverages on the Chicken Ranch Rancheria is a matter of special concern to the Tribe.

3. Federal law, as codified in 18 U.S.C. § 1161, leaves to tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

4. Present day circumstances make a complete ban on alcoholic beverages within the Chicken Ranch Rancheria ineffective and unrealistic. At the same time, a need still exists for strict tribal regulation and control over alcoholic beverage distribution.

5. The enactment of a tribal ordinance governing alcoholic beverage sales on the Chicken Ranch Rancheria and providing for the purchase and sale of alcoholic beverages through tribally licensed outlets will increase the ability of the tribal government to control the distribution, sale and possession of liquor on the Chicken Ranch Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the tribal government and delivery of tribal governmental services.

Section 2. Declaration of Policy. The Council hereby declares that the policy of the Tribe is to eliminate the evils of unlicensed and unlawful manufacture, distribution, and sale of alcoholic beverages on the Chicken Ranch Rancheria and to promote temperance in the use and consumption of alcoholic beverages by increasing tribal control over the possession and distribution of alcoholic beverages on the Reservation in accordance with 18 U.S.C. § 1161.

Section 3. Adoption of Liquor Licensing Ordinance. Seven (7) new Chapters shall be added to Title 4 of the Chicken Ranch Tribal Code entitled “Liquor Licensing Ordinance” and shall provide as follows:

LIQUOR LICENSING ORDINANCE

Chapters:

- 02 General Provisions
- 04 Definitions
- 06 Prohibition of the Unlicensed Sale of Liquor on the Reservation
- 08 Application for License
- 10 Issuance, Renewal, and Transfer of Licenses
- 12 Revocation of Licenses
- 14 Enforcement

Chapter 02 - GENERAL PROVISIONS

02.010 Short title. This ordinance shall be known and cited as the "Chicken Ranch Liquor Licensing Ordinance".

02.020 Purpose. The purpose of this ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Chicken Ranch Rancheria except pursuant to a license issued by the Chicken Ranch Tribal Council under the provisions of this ordinance.

02.030 Sovereign immunity preserved. Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Chicken Ranch Rancheria. No officer or employee of the Chicken Ranch Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has an expressed and explicit written authorization from the Chicken Ranch Rancheria Tribal Council.

02.040 Applicability within the reservation. This ordinance shall apply to all persons

within the jurisdiction of the Chicken Ranch Rancheria consistent with the applicable federal Indian liquor laws.

02.050 Interpretation and findings. The Chicken Ranch Tribal Council in the first instance may interpret any ambiguities contained in this ordinance.

02.060 Conflicting provisions. Whenever any conflict occurs between the provisions of this ordinance, the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

Chapter 04 - DEFINITIONS

04.010 Interpretation. In construing the provisions of this ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

04.020 Alcohol. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

04.030 Alcoholic beverage. "Alcoholic beverage" includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this ordinance with the term "liquor".

04.040 Beer. "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

04.050 Distilled spirits. "Distilled spirits" means any alcoholic beverage obtained by the

distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

04.060 Importer. "Importer" means any person who introduces alcohol or alcoholic beverages into the Chicken Ranch Rancheria from outside lands that are outside the jurisdiction of the Rancheria for the purpose of sale or distribution within Rancheria lands, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

04.070 Liquor License. "Liquor license" means a license issued by the Chicken Ranch Tribal Council under the provisions of this ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within lands of the Chicken Ranch Rancheria consistent with federal law.

04.080 Manufacturer. "Manufacturer" means any person engaged in the manufacture of alcohol or alcoholic beverages.

04.090 Person. "Person" means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the businesses of the Tribe. It shall be interchangeable in this ordinance with the term "seller" or "licensee".

04.100 Lands within the jurisdiction of the Tribe. "Lands within the jurisdiction of the Tribe" means all lands within the exterior boundaries of the Chicken Ranch Rancheria and all lands held in trust by the United States for the benefit of the Tribe, and such lands as may be

acquired in the future by the Tribe, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

04.110 Sale. "Sale" means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, or soliciting or receiving such beverages.

04.120 Seller. "Seller" means any person who, while within the jurisdiction of the Tribe, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

04.130 Tribal Council. "Tribal Council" or "Council" means the Chicken Ranch Tribal Council.

04.140 Tribe. "Tribe" means the Chicken Ranch Rancheria, a federally recognized Indian Tribe.

04.150 Wine. "Wine" means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 06 - PROHIBITION OF THE UNLICENSED SALE OF LIQUOR

06.010 Prohibition of the unlicensed sale of liquor. No person shall import for sale, manufacture, distribute or sell any alcoholic beverages within lands under the jurisdiction of the Tribe without first applying for and obtaining a written license from the Tribal Council issued in accordance with the provisions of this ordinance.

06.020 Authorization to sell liquor. Any person applying for and obtaining a liquor license under the provision of this ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

06.030 Types of licenses. The Council shall have the authority to issue the following types of liquor licenses for the sale of alcoholic beverages on lands within the jurisdiction of the Tribe:

A. "Retail on-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. "Retail on-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. "Retail off-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. "Retail off-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location

other than the one designated in the license.

E. "Manufacturers license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the lands within the jurisdiction of the Tribe.

Chapter 08 - APPLICATIONS FOR LICENSES

08.010 Application form and content. An application for a license shall be made to the Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor transaction applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation or Indian Tribe, including the Tribe, the signature and fingerprint of each of the officers of the corporation or Tribe under the seal of the corporation or attestation of the Tribal Secretary.

G. The application shall be verified under oath, notarized and accompanied by the licensed fee required by this ordinance.

08.020 Fee accompanying application. The Council shall by resolution establish a fee

schedule for the issuance, renewal and transfer of the following types of licenses:

- A. Retail on-sale general license;
- B. Retail on-sale beer and wine license;
- C. Retail off-sale general license;
- D. Retail off-sale beer and wine liquor; and
- E. Manufacturers license.

08.030 Investigation; denial of application. Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The Council shall deny an application for issuance, renewal or transfer of a license if either the applicant or the premises for which a license is applied for do not qualify for a license under this ordinance or if the applicant has misrepresented any facts in the application or given any false information to the Council in order to obtain a license.

The Council further may deny any application for issuance, renewal or transfer of a license if the Council finds that the issuance of such a license would tend to create a law enforcement problem, or if issuance of said license would not be in the best interests of the Tribe.

Chapter 10 - ISSUANCE, RENEWAL AND TRANSFER OF LICENSES

10.010 Public hearing. Upon receipt of an application for issuance, renewal or transfer of a license, and the payment of all fees required under this ordinance, the Secretary of the Council shall set the matter for a public hearing. Notice of the time and place of the hearing

shall be given to the applicant and the public at least ten (10) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on any lands subject to the jurisdiction of the Tribe. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Council shall hear from any person who wishes to speak for or against the application. The Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony. Notwithstanding any other provision of this Ordinance to the contrary, nothing in this Ordinance shall require the Secretary to publish notice of any hearing held under this Section 10.010, if the hearing is for a temporary event and notice is posted at the Tribal Administrative Offices and Casino at a location visible to the public.

10.020 Council action on the application. Within thirty (30) days of the conclusion of the public hearing, the Council shall act on the matter. The Council shall have the authority to deny, approve, or approve with conditions, the application. Before approving the application, the Council shall find: (1) that the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses, and (2) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by the Council by resolution. All businesses shall post their tribal liquor licenses issued under this ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

10.030 Multiple locations. Each license shall be issued to a specific person. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

10.040 Term of license. Temporary licenses. All licenses issued by the Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, special events, or similar occasion at a fee to be established by the Council by resolution.

10.050 Transfer of licenses. Each license issued or renewed under this ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Council. The Council shall have the authority to approve, deny or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 08.010 of this ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 12 - REVOCATION OF LICENSES

12.010 Revocation of license. The Council shall revoke a license upon any of the following grounds:

- A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal or transfer thereof.
- B. The violation of any condition imposed by the Council on the issuance, transfer or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal, tribal, or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal ordinance of the Tribe.

E. The failure to take reasonable steps to correct objectionable conditions on the licensed premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Council or its authorized representative.

12.020 Accusations. The Council, on its own motion through the adoption of an appropriate resolution meeting the requirements of this section, or any person may initiate revocation proceedings by filing an accusation with the Secretary of the Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this ordinance which would authorize the Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation, the Secretary of the Council shall cause the matter to be set for a hearing before the Council. Thirty (30) days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

12.030 Hearing. Any hearing held on any accusation shall be held before a majority of the Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and

to present written documents in support of their positions to the Council. The Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Council shall be final and non-appealable.

Chapter 14 - ENFORCEMENT

14.010 General penalties. Any person adjudged to be in violation of this ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation. The Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed under a separate ordinance adopted by the Council.

14.020 Initiation of action. Any violation of this ordinance shall constitute a public nuisance. The Council may initiate and maintain an action in any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this ordinance.

Section 4. Severability. If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and affect. To this end the provisions of this ordinance are severable.

Section 5. Effective Date. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the Federal Register.

[FR Doc. 2013-19562 Filed 08/12/2013 at 8:45 am; Publication Date: 08/13/2013]